

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TAILGATES, INC.	§	
	§	
Defendant Below,	§	No. 235, 2006
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
ROBERT BARANOWSKI and	§	in and for New Castle County
SHIRLEY BARANOWSKI,	§	C.A. No. 04C-06-198
	§	
Plaintiffs Below,	§	
Appellees,	§	
	§	
and	§	
	§	
JOSEPH NELSON,	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: November 8, 2006

Decided: January 23, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 23rd day of January, 2007, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) This is a personal injury action arising out of a fight at the Tailgates Bar.

Robert Baranowski was caught in the middle of a fight between Joseph Nelson and

another, unidentified, patron. The unidentified patron grabbed Baranowski by the hair and threw him against the wall, injuring Baranowski's left arm and hand. Baranowski and his wife sued Tailgates and Nelson.

2) The Superior Court granted summary judgment in favor of Nelson, finding that Nelson had no duty to retreat and that Nelson's conduct was not the proximate cause of Baranowski's injuries. The negligence claims against Tailgates went to trial, and the jury awarded Baranowski \$80,008.62 – the amount of his special damages. The Superior Court granted Baranowski's motion for additur, and entered a revised verdict in the amount of \$200,000 after Tailgates opted not to accept the alternative of a new trial on damages only.

3) In this appeal, Tailgates argues that the Superior Court erred in: 1) granting summary judgment in favor of Nelson; 2) allowing expert evidence concerning the appropriate standard of care; 3) allowing prejudicial reputation evidence; and 4) granting additur or a new trial on damages only.

4) Tailgates first argues that Nelson had a duty to act as a reasonable person; that a jury could find that Nelson's failure to "neutralize" the altercation before it became a physical fight was a breach of that duty; and that, by not stopping the fight, Nelson proximately caused Baranowski's injuries. We find no merit to this argument and affirm the trial court's decision on the basis of its Order dated October 11, 2005.

5) Tailgates next argues that the Baranowskis' expert, David Johnston, was not qualified to give an expert opinion because he had no experience running a bar and because he did not rely on any security standards or regulations that Tailgates allegedly breached. In short, Tailgates says that Johnston did nothing more than give his personal, unsupported, opinions as to the applicable standard of care, Tailgates' breach, and proximate cause. Tailgates contends that Johnston's testimony should have been excluded, and that, without that testimony, Tailgates was entitled to a directed verdict in its favor.

6) We conclude that the trial court acted well within its discretion in admitting Johnston's expert testimony.¹ There is no requirement that an expert on bar security actually work in a bar. Johnston has extensive experience in public safety, working with security issues at establishments that serve alcohol. He based his opinions, in part, on that experience, and, in part, on published authorities on bar and tavern security. There is nothing in this record to suggest that Johnston's opinions were unreliable, and, therefore, there is no basis on which to overturn the Superior Court's ruling.

¹*M.G.Bancorporation v. Le Beau*, 737 A.2d 513 (Del. 1999).

7) Tailgates next argues that the Superior Court should have excluded the testimony of Daniel Stirparo and Delaware State Police Corporal William Nottingham. Stirparo, the manager of a drugstore next door to Tailgates, testified over objection that there were a lot of rowdy people and fights in the parking lot outside Tailgates. Nottingham, who responded on the night of the incident, also testified that Tailgates is considered a “hot spot” where trouble is likely to occur on weekend nights.

8) Although it is unlikely that the admission of this testimony affected the verdict, this case will have to be retried for the reasons discussed below. Accordingly, we are addressing this claim to provide guidance in the retrial. Tailgates contends that the prejudicial effect of this “reputation” evidence far outweighed its limited probative value. Stirparo had no information about the night in question, and the fact that there may have been rowdiness or fights in the parking lot on other occasions does not tend to prove that Tailgates was negligent in allowing Baranowski to be injured inside the bar. The same analysis applies to Nottingham’s reputation testimony, which carried the added imprimatur of coming from a police officer. We agree with Tailgates that, under the appropriate balancing test, the reputation testimony should have been excluded.

9) Finally, Tailgates argues that the trial court erred in granting additur or a new trial on damages only. The trial court concluded that an award of only Baranowski's special damages was against the weight of the evidence because Baranowski suffered immediate and serious injuries, which required several surgeries and caused visible impairment to his arm and hand. Tailgates contends that the jury's verdict should be respected and that the amount awarded is not unreasonably low. Alternatively, Tailgates argues that the verdict likely was a compromise verdict and that the remedy for a compromise verdict is a new trial on both liability and damages.

10) We agree with the trial court that, in this case, an award of special damages, without any award for pain and suffering, is against the weight of the evidence. There was no dispute about the fact that Baranowski suffered serious injuries that resulted in permanent disfigurement of his left hand. Thus, if the jury concluded that Tailgates was liable for those injuries, it would be a manifest injustice to include no award for pain and suffering.²

11) In deciding that the verdict could not stand, the trial court did not address Tailgates' compromise verdict argument. In some cases:

the only reasonable inference to be drawn from the record is that the verdict must have been the result of a compromise whereby

²*Maier v. Santucci*, 697 A.2d 747 (Del. 1997).

some jurors were persuaded to agree to the finding of liability by the agreement of others to an unjustifiably low amount of the award. Verdicts so found are generally condemned.³

Tailgates argues on appeal, as it did in the trial court, that the jury's verdict has all the earmarks of a compromise. We agree. First, the jury could have questioned Tailgates' liability because very little time elapsed between the exchange of words and the fist fight. Despite Johnston's testimony that more bouncers or better trained bouncers would have averted the fight, some members of the jury could have concluded that there was not enough time to intervene and prevent the injury. Second, since they knew that the actual perpetrator – the unknown patron – was not bearing any responsibility for the injuries he caused, some members of the jury could have believed that Tailgates should not have to pay for all of Baranowski's damages. Finally, the case went to the jury on the Wednesday before Thanksgiving, and the members of the jury may have been anxious to conclude their deliberations quickly.⁴

12) Given these facts, we are satisfied that the verdict of only special damages probably was a compromise verdict. Accordingly, we conclude that Tailgates should have been allowed to elect a new trial on all issues in lieu of additur.⁵

³*Lawrence v. Staite*, 253 A.2d 506, 508 (Del. 1969).

⁴*Cf. Younger v. State*, 496 A.2d 546, 553 (Del. 1985).

⁵*Lawrence v. Staite*, 253 A.2d at 508.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is AFFIRMED IN PART and REVERSED IN PART and REMANDED for further action in accordance with this decision. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice